

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEILA MARIE MCCOY,  
Plaintiff,  
v.  
COMMISSIONER OF SOCIAL  
SECURITY,  
Defendant.

No. 2:23-cv-881-KJN

LEILA MARIE MCCOY,  
Plaintiff,  
v.  
COMMISSIONER OF SOCIAL  
SECURITY,  
Defendant.

No. 2:23-cv-882-KJN

FINDINGS AND RECOMMENDATIONS TO  
DISMISS FOR FAILURE TO PROSECUTE

Plaintiff, who proceeds in this action without counsel, filed her complaints in May of 2023 and requested leave to proceed without the prepayment of the filing fee. (ECF Nos. 1 and 2 in the -881 and -882 cases.) Plaintiff's requests were granted, and in July of 2023 the undersigned related the two cases. (ECF Nos. 10.) However, an examination of the docket indicates all correspondence with plaintiff has been returned to the court as undeliverable. To date, plaintiff has not updated her address, despite multiple attempts to correspond with her.

**Legal Standard**

It is plaintiff's duty to keep the court informed of her current address. Local Rule 182(f) provides: "Each appearing attorney and pro se party is under a continuing duty to notify the Clerk and all other parties of any change of address or telephone number of the attorney or the pro se party. Absent such notice, service of documents at the prior address of the attorney or pro se party shall be fully effective." Further, Local Rule 183(b) provides: "A party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute."

Eastern District Local Rule 183(a) provides, in part:

Any individual representing himself [] without an attorney is bound by the Federal Rules of Civil or Criminal Procedure, these Rules, and all other applicable law. All obligations placed on "counsel" by these Rules apply to individuals appearing in propria persona. Failure to comply therewith may be ground for dismissal, judgment by default, or any other sanction appropriate under these Rules.

See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the same rules of procedure that govern other litigants") (overruled on other grounds). A district court may impose sanctions, including involuntary dismissal of a plaintiff's case pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to comply with the court's orders, the Federal Rules of Civil Procedure, or the court's local rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court "may act sua sponte to dismiss a suit for failure to prosecute"); Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or the court's orders); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) ("Failure to follow a district court's local rules is a proper ground for dismissal."); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) ("Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with any order of the court."); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th

1 Cir. 1986) (per curiam) (stating that district courts have inherent power to control their dockets  
2 and may impose sanctions including dismissal or default).

3 A court must weigh five factors in determining whether to dismiss a case for failure to  
4 prosecute, failure to comply with a court order, or failure to comply with a district court's local  
5 rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

6 (1) the public's interest in expeditious resolution of litigation; (2) the  
7 court's need to manage its docket; (3) the risk of prejudice to the  
8 defendants; (4) the public policy favoring disposition of cases on  
their merits; and (5) the availability of less drastic alternatives.

9 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002).

10 **Analysis**

11 Here, the first two factors weigh in favor of dismissal, because this case has already been  
12 delayed by plaintiff's failure to take the steps necessary to move this case forward. The third  
13 factor also slightly favors dismissal, because, at a minimum, defendants have been deprived of an  
14 opportunity to prepare their defense.

15 Furthermore, the fifth factor, availability of less drastic alternatives, favors dismissal,  
16 because the court has already attempted less drastic alternatives. Specifically, the court granted  
17 plaintiff leave to proceed without prepayment of the filing fee, but this correspondence was  
18 returned as undeliverable. Plaintiff was provided multiple opportunities to update her address,  
19 but all correspondence since the filing of the complaint has come back as undeliverable, and  
20 plaintiff never informed the court of any change of address. See L.R. 182(f) (imposing a duty on  
21 parties to notify the court and parties of any change of address); Carey v. King, 856 F.2d 1439,  
22 1441 (9th Cir. 1988) ("A party, not the district court, bears the burden of keeping the court  
23 apprised of any changes in [the party's] mailing address."). Plaintiff remains incommunicado  
24 since filing of the complaint, leaving the court with little alternative but to recommend dismissal.  
25 See Carey, 856 F.2d at 1440-41 (affirming dismissal for failure to comply with local rule  
26 requiring pro se plaintiffs to keep court apprised of address; noting that, without a current address,  
27 district court could not threaten litigant with lesser sanctions when such order of sanctions or to  
28 show cause "would only find itself taking a round trip tour through the United States mail").

1 Finally, as to the fourth factor, the public policy favoring disposition of cases on their  
2 merits, that factor is outweighed by the other Ferdik factors. Indeed, it is plaintiff's own failure to  
3 prosecute the case and comply with the rules that precludes a resolution on the merits.

4 Therefore, after carefully evaluating the Ferdik factors, the court concludes that dismissal  
5 is appropriate.

6 **ORDER and RECOMMENDATIONS**


7 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a  
8 district judge to these actions.

9 Further, IT IS HEREBY RECOMMENDED that:

- 10 1. The actions be dismissed pursuant to Federal Rule of Civil Procedure 41(b); and  
11 2. The Clerk of Court be directed to close these cases.

12 These findings and recommendations are submitted to the United States District Judge assigned to  
13 the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after  
14 being served with these findings and recommendations, any party may file written objections with  
15 the court and serve a copy on all parties. Such a document should be captioned "Objections to  
16 Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served  
17 on all parties and filed with the court within fourteen (14) days after service of the objections.  
18 The parties are advised that failure to file objections within the specified time may waive the right  
19 to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998);  
20 Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

21 Dated: October 19, 2023

22   
23 KENDALL J. NEWMAN  
24 UNITED STATES MAGISTRATE JUDGE

25 mcco.881 and 882